

# Disposition of the Independent Review Panel

Complainant: Wilfredo Fernando

Date: March 1, 2004

IRP Case: A2003.048

MDPD Case: PC2003-0104



The Independent Review Panel met on February 26, 2004 for the purpose of publicly reviewing the complaint made by Wilfredo Fernandez against the Miami-Dade Police Department and the department's response to that complaint. The following represents the findings of the Panel.

## A. Incident

Wilfredo Fernandez alleges that Officer van Gil pulled him over for speeding but when he received his citation it was falsely documented. Mr. Fernandez challenged the officer and was subsequently arrested for "Reckless Driving" and "Resisting Arrest without Violence." A passerby in a black pickup stopped to assist the officer.

## B. Allegations

- 1) Officer van Gils called Mr. Fernandez an "asshole" and "an idiot."
- 2) Officer van Gils was untruthful about his reckless driving, about rolling up the vehicle window on Officer van Gils' arm, and about his running from Officer van Gils to avoid arrest.
- 3) Officer van Gils utilized unnecessary force when he pulled Mr. Fernandez from his vehicle and threw him to the ground (causing no injury) to effectuate his arrest.

## C. Disposition of the Independent Review Panel regarding allegations

NOT SUSTAINED. Due to lack of independent witnesses and sufficient evidence to corroborate either the complainant's or the accused officer's version of events, the allegations made by Mr. Fernandez cannot be sustained. It is the word of Mr. Fernandez against that of Officer van Gils.

## C. Other Findings

- 1) There was a discrepancy in Officer van Gils' account on the A-form and his statement to IA. His A-form was consistent with Mr. Fernandez' statement in that the truck driver assisted in the arrest. However, in Officer van Gils' testimony to IA, he said the truck driver stopped, asked him if he needed any help, and he responded, "I got it."
- 2) The IA investigation did not address the inconsistency.

The Panel concluded the complaint on February 26, 2004.

# **Independent Review Panel**

## **Staff Recommendation to the Panel**

**February 26, 2004**

**IRP Complaint No.:** A2003.048

**MDPD Case No.:** PC2003-0104

**Complainant:** Wilfredo Fernandez

**Accused Party:** Miami-Dade Police Department (MDPD), Officer Patrick van Gils

**Date Complaint Received:** February 18, 2003

**Materials Reviewed:** Grievance Report Form, Correspondence, Staff Notes, and Departmental Response.

**Complaint:** Wilfredo Fernandez stated that on Thursday, February 14, 2003, at 9:45 a.m., he was driving north at approximately NE 18 Avenue & 191 Street, when Motorcycle Unit Officer Patrick van Gils standing on a curb, walked onto the street and gestured for him to pull over.

According to the complainant, Officer van Gils approached his driver's side window and angrily yelled, "You better have a damn good reason why you're speeding and why I should not arrest you right now for speeding and reckless driving." The complainant did not respond, but presented his driver's license, registration and insurance information. The officer walked away towards his motorcycle, and a few minutes later, returned and handed Mr. Fernandez the speeding citation and asked him to sign. The complainant signed, and then read the citation which indicated that he was driving 65 in a 35 mph speed zone. Mr. Fernandez then commented, "I wasn't doing 65." The complainant stated that the officer threatened him with arrest. According to Mr. Fernandez, he asked the officer for the vehicular documents and said, "so that I can be on my way." The officer angrily replied, "Now, you sit there and wait!" Mr. Fernandez then said, "Then I need to speak to your supervisor." The officer then yelled, "Now you're under arrest. Get the hell out of the car!"

The complainant stated that he visibly held his cellular phone in his hand and tried to dial 9-1-1. Officer van Gils then attempted to open the driver's side door, found that it was locked; so he placed his hand inside the vehicle ('95 Honda Civic - 2 door) in an attempt to unlock and open the door. The officer mistakenly pressed the switch which caused the power window to roll up. The complainant said that the Arrest Affidavit (A-form) falsely indicates that he (the complainant) tried to roll up the window; when in fact, it was Officer van Gils. According to the complainant, the officer successfully unlocked and opened the door, and ordered the complainant to exit.

Mr. Fernandez said that when he proceeded to exit, Officer van Gils grabbed him by the back of the neck (part of his shirt), swung him around and down to the ground, where the officer handcuffed him. A passerby from a black pick-up truck stopped and assisted the officer with the arrest by holding down the complainant by the neck with his hand. The officer then ordered the complainant to get up, while he pulled up the complainant by the handcuffs. As the officer began to escort the complainant over to

the sidewalk where he then ordered him to sit, the complainant said he yelled out to persons who drove by, "Call 9-1-1. Call a supervisor." Mr. Fernandez pointed out that the officer misrepresented the facts in his A-form when he said that Mr. Fernandez "began to run down the street screaming at passing vehicles to call 911," at which point the officer "directed" him to the ground and handcuffed him. Mr. Fernandez denied running down the street. Mr. Fernandez stated that when he asked the officer to loosen the extremely tight handcuffs, the officer said, "They are not made for comfort." Mr. Fernandez said Officer van Gils called him an "idiot" and an "asshole." Officer van Gils radioed for another officer to respond to the scene to transport the complainant to jail. Officer William Buxton responded.

Mr. Fernandez was charged with "Reckless Driving" and "Resisting Arrest without Violence."

### **Departmental Response – MDPD Investigative Report – PC2003-0104:**

According to Internal Affairs' (IA) summary of the statements:

Officer Patrick van Gils stated that he pointed his laser device at Mr. Fernandez' vehicle and it verified that he was traveling at 65 mph. He waved down the driver, and asked him why he was driving so recklessly. The officer denied that he stated, "You better have a damn good reason why you're speeding and why I shouldn't arrest you." However, he told the driver that he could arrest him for reckless driving, to which Mr. Fernandez replied, "Man just give me the ticket. I need to go." Officer van Gils then informed the driver that he was under arrest, and to exit the vehicle. At this point, the driver began to roll up the vehicle window and call 9-1-1 on his cell phone. Officer van Gils admitted that he reached into the window to unlock the driver's side door; but "there was no way that he rolled the window up on his own arm." The officer opened the door, grabbed Mr. Fernandez' arm and then "guided him out of the vehicle." Mr. Fernandez ran down the roadway yelling, "Call 9-1-1" to passing motorists. The officer pursued Mr. Fernandez on foot and said that a passing motorist driving a black pick-up truck stopped. Officer van Gils grabbed Mr. Fernandez shirt and belt, and ordered him to lie on the ground. Mr. Fernandez complied, and "the officer laid on top of Mr. Fernandez to handcuff him." Officer van Gils advised that the pick-up truck driver asked him if he needed any help, and that he responded, "I got it." Mr. Fernandez asked to see a supervisor and Officer van Gils told him he would see one shortly. The officer called for back up and Mr. Fernandez was transported to jail by that officer.

According to Officer van Gils' Arrest Affidavit, "...Subject was directed to the ground by the assistance of a passerby and cuffed."

Officer William Buxton stated that the driver complained that the handcuffs were too tight and he (Buxton) loosened them.

The Miami-Dade Police Department (MDPD) Disposition Panel made the following findings regarding the allegations:

Allegation #1 - Not Sustained – Officer van Gils called him an “asshole” and “an idiot.”

“Officer van Gils denies the allegation... There were no independent witnesses to substantiate the allegation...”

Allegation #2 - Not Sustained – Officer van Gils was untruthful about his reckless driving, about rolling up the vehicle window on Officer van Gils’ arm, and about his running from Officer van Gils to avoid arrest.

“On April 1, 2003, the complainant pled to Reckless Driving, adjudication was withheld, and was assessed \$210.25 in fines. Charge two: Resisting without Violence was dismissed as part of the plea arrangement. [The] complainant’s plea negates the allegation of false arrest and there are no independent witnesses to substantiate the other allegations...”

Allegation #3 - Not Sustained – Officer van Gils utilized unnecessary force when he pulled him from his vehicle and threw him to the ground (causing no injury) to effectuate his arrest.

“Officer van Gils denies the allegation... Officer van Gils stated that he only used necessary arrest techniques to guide and direct the complainant to affect the arrest. There were no injuries to the complainant and no independent witnesses to substantiate the allegation...”

**IRP Staff Remarks:** A copy of the IA investigative report was sent to Mr. Fernandez, with the request that he advise Panel staff whether or not it satisfied his complaint. In a follow-up call, the complainant deliberated whether or not to pursue the matter via the IRP. Additional time was allowed for him to decide, and in a second follow-up call, Mr. Fernandez expressed interest in participating in an IRP committee meeting, which was then scheduled for February 9, 2004. In a letter addresses to Mr. Fernandez, he was asked to confirm his attendance by February 6<sup>th</sup>. The meeting was subsequently cancelled due to no further contact from the complainant.

**Findings of Fact:** On 2/13/03:

- Wilfredo Fernandez was issued two traffic citations for “Reckless Driving” and “Speeding.”
- Mr. Fernandez was arrested and charged with “Reckless Driving” and “Resisting without Violence.”
- Mr. Fernandez yelled to passersby to call 9-1-1.
- A passerby in a black truck stopped at the scene and spoke with Officer van Gils. No contact information was obtained from the truck driver.

**Staff Findings:**

- 1) Regarding the allegations - Due to the lack of independent witnesses and sufficient evidence to corroborate either the complainant’s or the accused officer’s version of events, the allegations

made by Mr. Fernandez cannot be sustained. It is the word of Mr. Fernandez against that of Officer van Gils.

2) Other Findings:

- a. There is a discrepancy in Officer van Gils' account on the A-form and his statement to IA. His A-form is consistent with Mr. Fernandez' statement in that the truck driver assisted in the arrest. However, in Officer van Gils' testimony to IA, he said the truck driver stopped, asked him if he needed any help, and he responded, "I got it."
- b. The IA investigation did not address the inconsistency.

**Staff Recommendations:** Staff recommends that the Panel accept the staff findings and conclude the complaint.